

## REMARKS

### 1. Preliminary Remarks

#### a. Status of the Claims

Claims 34-37 were pending. Claims 34 and 35 have been found allowed. Applicant has amended claims 36 and 37. Upon entry of the amendments made herein, claims 34-37 will be pending and under active consideration in this application.

#### b. Claim Amendments

Claim 36 has been amended and is now directed to a vector comprising a heterologous sequence, wherein the heterologous sequence consists of the sequence of the nucleic acid of claim 34 or 35. Support for amended claim 36 can be found throughout the specification, for example, paragraph 0024. One of ordinary skill in the art would recognize that features other than the heterologous sequence would be necessary for a functional vector.

Claim 37 has been amended and is now directed to a probe comprising a heterologous sequence, wherein the heterologous sequence consists of the sequence of the nucleic acid of claim 34 or 35. Support for amended claim 36 can be found throughout the specification, for example, paragraph 0028. One of ordinary skill in the art would recognize that features other than the heterologous sequence would be necessary for identifying whether the probe bound to a complementary sequence.

#### c. Interview Summary

The undersigned would like to thank the Examiner for the courtesy of the telephone interview of February 4, 2009, wherein the new matter rejection and claim amendments were discussed. The claim amendments made herein are identical to the amendments proposed in the interview. Based on the interview, Applicant believes that the application is in condition for allowance.

### 2. Patentability Remarks

#### a. 35 U.S.C. §112, first paragraph

On pages 2 and 3 of the Office Action, the Examiner rejects claims 36 and 37 under 35 U.S.C. §112 for allegedly failing to comply with the written description rejection. The Examiner rejects claims 36 and 37 on the grounds that the specification allegedly does not provide sufficient support for viral or probe insert language.

In view of the foregoing amendments, Applicant respectfully submits that the specific objections by the Examiner are now moot. Accordingly, Applicant submits the rejection of claim 36 and 37 under 35 U.S.C. §112, first paragraph, for allegedly lacking written descriptive support, has been overcome and should be withdrawn.

### 3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

POLSINELLI SHUGHART PC

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